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In re Application of	:	OFFICE OF PETITIONS
Hertwig et al.	:	
Application No. 09/640729	:	
Filing or 371(c) Date: 08/17/2000	:	DECISION
Attorney Docket Number:	:	ON PETITION
853563.424	:	

This Decision is in response to a "Request for Consideration of Previously Submitted Petition," filed electronically on December 2, 2008. Applicant notes that a petition to revive was filed on March 30, 2004, in response to the discovery that the file was lost, and that this Office failed to enter into the application file a Response after a final Office action. Applicants request that the original Response after Final Rejection, Petition to Revive, and RCE be entered into the record, and that the application be re-opened for prosecution.

A review of the present Request for Consideration of Previously Submitted Petition reveals that Applicant filed a "Request for Reconstruction of Lost File and PTO Action Relating to Applicant's Response After Final and, in the alternative, Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," on March 30, 2004. Accompanying the Petition to Revive the application was a Request for Continued Examination ("RCE") and a fee transmittal. Applicant has included a copy of the documents, along with a copy of an Auto-Reply Facsimile Transmission acknowledging receipt by this Office of four pages on March 30, 2004. The petition and RCE include a Certificate of Transmission under 37 CFR 1.8 certifying to the their transmission to this office on March 30, 2004, executed by Mr. Shannon Lester; however, no statement from Mr. Lester attesting to the transmission of the documents has been included with the present petition.

The Request for Reconstruction of Lost File and PTO Action Relating to Applicant's Response After Final is being treated as a petition under 37 CFR 1.181 (no fee).

The petition under 37 CFR 1.181 is dismissed.

The petition under 37 CFR 1.137(b) is held in abeyance.

Office records

A review of Office records reveals that a final Office action was mailed on July 24, 2003. Applicants filed an Amendment after final on September 4, 2003. Office records then show that the application file was marked as lost on February 2, 2004, and marked found on November 12, 2004.

Also on November 12, 2004, the Office mailed a Notice of Allowance and Issue Fee Due, and Notice of Allowability. No response to the Notices of Allowance and Allowability having been received, the application became abandoned on February 13, 2005. A Notice of Abandonment was mailed May 4, 2005.

In view of the above – the file was found on November 12, 2004 - the Request for Reconstruction of Lost File and PTO Action Relating to Applicant's Response After Final is dismissed.

In view of the mailing of the Notice of Allowance and Issue Fee Due, and Notice of Allowability, a Decision on the petition to revive and RCE will be held in abeyance.

Applicant should clarify whether the petition to revive the application and RCE and submission¹, which Applicants assert were filed because the status of the application was unclear, are necessary. Applicant is also advised the Notice of Allowability notes that it is responsive to "remarks filed on October 7, 2003." A copy of the Notices is enclosed

Finally, Applicant is reminded that the application is presently abandoned for failure to timely pay the issue fee in response to the Notice of Allowance and Issue Fee Due.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

Enclosure: Notice of Allowance and Issue Fee Due and Notice of Allowability

¹ A petition to revive the application for failure to pay the issue fee would be required to revive the application.